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Via Electronic Filing

January 10, 2014

United States Magistrate Judge James Orenstein
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: Phoenix Beverages, Inc. et al. v. Exxon Mobil Corporation, et al.
Case No. 1:12-CV-03771-PKC-JO

Dear Judge Orenstein:

This office represents United Technologies Corporation, Sikorsky Aircraft Corporation, Carrier Corporation, and Simmonds Precision Products, Inc. (collectively “UTC”), third party defendants in the referenced action. We also serve as lead counsel for a group of third party defendants, identified in Attachment A to this letter (the “Attachment A Parties”).

This letter is written in response to the January 9, 2014 letter (Doc. 353) written by Attorney Andrew Anselmi, on behalf of Exxon Mobil Corporation and Quanta Resources Corporation, regarding the Federal Third Party Defendants’ motion to stay all depositions in this matter. UTC and the Attachment A Parties take no position with respect to the motion to stay depositions and are prepared to participate, as appropriate and necessary, whenever said depositions take place. However, we do object to Exxon Mobil’s and Quanta’s position that two depositions of a deponent should not be permitted.¹

Plaintiffs allege that contamination on the Phoenix property originated on the adjacent Quanta site. However, the Phoenix property was, for more than 50 years, part of the Charles Pratt Works oil refinery, the liability for which we believe lies with Exxon Mobil (separate and apart from any alleged liability Exxon Mobil may

¹ The letter setting forth this position was filed at 5:53 pm last evening. This response was prepared and filed as quickly as possible.

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have for shipments to the Quanta site).² We also believe significant Pratt Works refining operations were conducted directly on the Phoenix property, calling into question the source of conditions on Phoenix.

As Your Honor was made aware at the December 6th status conference, an investigation of the Phoenix property has been directed by the New York State Department of Environmental Conservation (“DEC”) and is expected to commence shortly. Data and information generated during the investigation will be directly relevant to the question of the source of the alleged contamination on the Phoenix property. That data and information will inevitably give rise to additional questions of Exxon Mobil witnesses, some of whom may have already been deposed before the data and information is available.

A blanket prohibition of multiple depositions of the same witness would prevent the third party defendants from conducting reasonable discovery on this new data or on topics that had not previously been the subject of discovery. Additionally, as to both Exxon Mobil and Quanta, we have had no document discovery. Once document discovery goes forward and the Quanta and Exxon Mobil documents are produced, we may well have additional non-duplicative questions for their witnesses. Further, a second deposition of certain witnesses may be necessary to address factual issues in the third party action that may not be relevant to the main action.

Therefore, we respectfully request that Your Honor reject the position of Exxon Mobil and Quanta regarding future depositions, and make no ruling that would preclude the third party defendants from taking, at an appropriate time, non-duplicative depositions related to the Charles Pratt Works operations or triggered by documents produced to us by Exxon Mobil or Quanta after the date of this letter.

Sincerely,

/s/ James P. Ray

James P. Ray

Copy to: All Counsel of Record (via electronic filing)

² Exxon Mobil is under a consent order with DEC for investigation of the former Charles Pratt Works properties. We understand that very little discovery has been conducted to date related to the Charles Pratt Works operations.

ATTACHMENT A

ALCOA INC./REYNOLDS METALS COMPANY

BASF CORPORATION

BEAZER EAST, INC.

BORGWARNER INC.

QUALITY DISTRIBUTION, INC.

FORD MOTOR COMPANY

ELECTRIC BOAT CORPORATION, A GENERAL DYNAMICS COMPANY

HONEYWELL INTERNATIONAL INC.

INGERSOLL RAND COMPANY

NORTHROP GRUMMAN CORP.

ROCKWELL AUTOMATION/ ROCKWELL INTERNATIONAL

STANLEY BLACK & DECKER, INC.

UNITED TECHNOLOGIES CORPORATION, CARRIER CORPORATION,
SIKORSKY AIRCRAFT CORPORATION, SIMMONDS PRECISION
PRODUCTS, INC.